U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37735907

Date: APR. 30, 2025

Appeal of Service Center Operations (SCOPS) Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner is a sales office affiliated with an information technology (IT) outsourcing company based in the Philippines.[1] It seeks to temporarily employ the Beneficiary as its chief operating officer (COO) under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity, including its affiliate or subsidiary, to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

SCOPS denied the petition, concluding that the record did not establish that the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify the beneficiary to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

[1] Different materials in the record refer to the foreign entity as the Petitioner's parent and its subsidiary, but the description of the entities' ownership structures indicates that the entities are affiliates as defined at 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*). The Petitioner's chief executive officer owns 80% of the foreign entity and 100% of the petitioning U.S. entity.

II. ANALYSIS

SCOPS determined that the Petitioner did not establish that it seeks to employ the Beneficiary in an executive capacity. The Petitioner asserts that some of the Beneficiary's duties may be more akin to those of a manager, but the Petitioner does not claim that it seeks to employ the Beneficiary in a primarily managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary would be employed in an executive capacity.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

To show that a beneficiary is eligible for L-1A nonimmigrant visa classification as an executive, the petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary will be *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether the beneficiary's duties will be primarily executive, we consider the description of the job duties, the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding the beneficiary's actual duties and role in the business.

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, we must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The Beneficiary has served as the foreign affiliate's COO since 2019. The Beneficiary entered the United States in January 2024 as a B-2 nonimmigrant visitor, and was still in the United States when the Petitioner filed the petition in June 2024.

The Petitioner initially sought consideration under the "new office" provisions at 8 C.F.R. § 214.2(l)(3)(v), but SCOPS concluded that the Petitioner did not qualify as a new office because it had been doing business in the United States for more than one year at the time it filed the petition. *See* 8 C.F.R. § 214.2(l)(1)(ii)(F). Therefore, the Petitioner must establish that it was able to support a primarily executive position at the time of filing.[2] We will not discuss the Petitioner's plans for a greatly expanded U.S. operation after five years. Evidence that the company will develop or grow to support an executive position is acceptable only for new office petitions.

On appeal, the Petitioner cites and paraphrases the following passage from the *USCIS Policy Manual*:

[2] *See* 8 C.F.R. § 103.2(b)(1), which requires a petitioner to meet all eligibility requirements at the time of filing.

> An L-1 beneficiary is not acting in an executive capacity merely based on the number of employees that the beneficiary directs or has directed. However, if staffing levels are used as a factor in determining whether an L-1 beneficiary has acted or will be acting in an executive capacity, officers must consider the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function.
>
> An executive directs the management of the organization, major component, or essential function of a given organization by controlling the work of managerial or lower-level executive employees. This control could either take the form of direct supervision of those managers or executives or could be more indirect under some circumstances.

2 *USCIS Policy Manual* L.6(D), https://www.uscis.gov/policy-manual.

The Petitioner cites the above passage with regard to the claim that SCOPS relied too heavily on the small size of the petitioning U.S. entity. But the size of the Petitioner's staff is not the only issue. The same cited passage requires a beneficiary to have authority over "managerial or lower-level executive employees." As discussed further below, the evidence is not sufficient and consistent in this respect.

The Petitioner also cites an unpublished appellate decision from 2019, in which we approved a petition involving a company with "an on-site/offshore model and that the foreign staff work to deliver projects and solutions to U.S.-based customers under the Beneficiary's management." The decision is unpublished and has no precedential authority.

Also, the Petitioner has not established that the fact pattern in the cited 2019 decision is sufficiently similar to the matter at hand. In the 2019 decision, we noted that the petitioning employer "has eight U.S. employees," and we determined that "[t]he Petitioner has . . . demonstrated that [the Beneficiary] has sufficient staff available to relieve him from significant involvement in day-to-day operational tasks." We further concluded: "The employment, duties, and qualifications of the Beneficiary's entire team are well documented in the record." These conclusions do not apply to the matter at hand.

In the appeal before us, the Petitioner has not fully documented its employment of supporting staff to corroborate the nature of the Beneficiary's claimed duties.

In the denial notice, SCOPS stated that the Petitioner "did not provide enough evidence regarding the proposed subordinate staff," and did not establish how staff of the Petitioner's foreign affiliate in the Philippines would relieve the Beneficiary from having to perform predominantly non-qualifying operational and administrative tasks in the United States.

We conclude that the Petitioner has not established the presence of "managerial or lower-level executive employees" in the United States, and gaps and inconsistencies in the record raise questions about the actual nature of the Beneficiary's intended duties and the roles of claimed support staff.

The Petitioner previously stated that the Beneficiary "will be responsible for [the petitioning U.S. entity's] marketing, sales and operations" and "will continue to exercise supervision and control over,

and oversee the work of other members of [the organization's] marketing and sales team in the Philippines." The Petitioner described the Beneficiary's four core responsibilities, summarized below with the approximate time he would devote to each:

- Develop business development strategies and plans and direct their implementation by the sales and marketing team (30%);
- Oversee the work of the sales and marketing team (30%);
- Meet and consult with clients (30%); and
- Attend industry functions and represent the company at conferences, stakeholder meetings, and other engagements (10%).

According to the above breakdown, the Beneficiary would spend the majority of his time on duties relating to "the sales and marketing team," the only subordinates mentioned in the job description. But the record does not show that there is such a team.

An organizational chart submitted with the petition indicated that the Beneficiary would report to the chief executive officer and would have authority over four positions: Project Manager Consultant; System Administrator; Sales Consultant; and Finance Consultant. The Petitioner asserts on appeal that the individuals in those four positions "support and relieve Beneficiary from non-qualifying day-to-day tasks for the company."

Although the organizational chart showed five positions apart from the Beneficiary's intended role as COO, the Petitioner indicated on the petition form that it had two U.S. employees at the time of filing. The Petitioner's income tax returns for 2021 and 2022, the only years for which the Petitioner submitted tax returns, do not show payment of any salaries.

SCOPS asked the Petitioner to submit additional information regarding the Beneficiary's claimed U.S. subordinates and evidence of their employment. SCOPS specifically requested copies of tax and payroll documentation.

In response, the Petitioner submitted copies of quarterly tax returns, indicating that the Petitioner paid one unnamed employee in the first and second quarters of 2024. The Petitioner also submitted job descriptions for a "Finance Controller Consultant," "Business Systems Analyst/Project Manager," "Sales Manager Consultant," and "System and Network Administrator," titles that roughly correspond with those shown on the Petitioner's organizational chart.[3] The evidence submitted with these job descriptions does not show that any of these individuals are employees of the petitioning entity.

The submitted evidence does not show that the Petitioner employs the system/network administrator in the United States as claimed. One of the submitted job descriptions states that "[t]he System/Network Administrator is responsible for managing, maintaining, and supporting the company's IT infrastructure," including "the company's LAN, WAN, and VPN networks," and "[i]nstall[ing], configur[ing], and maintain[ing] servers, storage systems, and related infrastructure."

[3] SCOPS observed that the titles on the job descriptions do not match the titles on the organizational chart, but they are similar enough that we can conclude that the variant titles refer to the same four positions.

The record, however, does not establish that the Petitioner has such infrastructure in the United States. A lease agreement for the Petitioner's address of record describes the space as an "office space . . . having a maximum occupancy capacity of one (3) persons [sic]." The Petitioner's income tax returns do not list any assets and the Petitioner has not otherwise established its possession of servers or other IT infrastructure in the United States.

The Petitioner has submitted two résumés for the individual identified the system/network administrator. The first version, submitted with the petition, specifies the employer as the Petitioner's foreign affiliate in "[redacted], PH." The second version removes the reference to the location, but it still names the foreign affiliate as the individual's employer. This individual's name does not appear on the foreign entity's organizational chart.

The individuals identified as the Petitioner's "Finance Controller Consultant" and "Project Manager Consultant" are not the Petitioner's employees, and therefore they are not "managerial or lower-level executive employees." Rather, the record contains "Consulting Agreements" from May 2024, each indicating that the "Consultant will not be treated as an employee of the Company." Only one of these individuals, the project manager consultant, is named on a record of "[p]ayments from Jan 01, 2024 to Dec 31, 2024 for all contractors."

The fourth and final position said to be subordinate to the Beneficiary is that of the sales consultant, also called the sales manager consultant. A submitted job description for that position contains several references to a "sales team," a phrase that the Petitioner continues to use on appeal. But the record does not identify any members of the "sales team" or otherwise confirm their employment. The record also lacks evidence that the Petitioner actually employs the sales consultant.

The résumé for the person identified as the sales consultant does not refer to the petitioning company or its foreign affiliate. Instead, it indicates that he is the "Vice President of Sales and Business Development" for "an Electronic Transaction Processing and Payment Solutions Provider" based in New York. The résumé indicates that he has worked for the company in New York for "12 years 9 months" since "November 2011," which would date the résumé sometime around August 2024, two months after the petition's filing date and a month after SCOPS issued the request for evidence.

The incomplete documentation and inconsistent information provided by the Petitioner do not establish that the Petitioner has any managerial or lower-level executive employees for the Beneficiary to oversee. Therefore, the Petitioner has not shown that the Beneficiary will direct the management of the petitioning U.S. organization.

The Petitioner asserts that SCOPS did not sufficiently consider the Beneficiary's continued authority over employees of the Petitioner's affiliate in the Philippines. But there are deficiencies here as well.

As noted above, the Petitioner submitted a proposed organizational chart for five years into the future, consisting largely of unfilled future positions. The Petitioner contends on appeal that, while "these [positions] are currently not filled from within the United States . . . , the duties of these positions are already being performed by the parent company's employees in the Philippines." The Petitioner does not specify which employees abroad are performing which duties. Some of the vacant positions shown on the proposed U.S. chart do not match job titles on the foreign entity's chart.

An organizational chart for the Petitioner's foreign affiliate[4] indicates that the Beneficiary has authority over "Marketing/Operations," and a job description for the COO position indicates that the Beneficiary has authority over "the marketing team."

The Petitioner submitted job descriptions for some of the positions shown on the organizational chart shown as subordinate to the Beneficiary. The job descriptions and résumés for the executive creative director and some subordinate positions refer to marketing responsibilities, but also to positions and departments that are not shown on the foreign entity's organizational chart. For example, the executive creative director's résumé specifies that he "[c]ollaborate[s] with other departments (marketing, sales, account management)," and the creative director's job description refers to "[c]ollaborat[ion] with the Marketing Director." The chart shows no marketing director, no sales department, and no account management department. The inclusion of "marketing" among "other departments" implies a marketing department separate from the executive creative director's branch of the hierarchy, but the word "marketing" appears only once on the foreign organizational chart, in the phrase "Marketing/Operations" directly above the Beneficiary's name.

Even then, a promotional brochure in the record indicates that the employees in the Philippines with "marketing" responsibilities are associated with the foreign entity's "design and digital marketing division" that "provide[s] companies with branding . . . and digital marketing services." The available evidence, therefore, indicates that these employees in the Philippines are chiefly responsible not for the Petitioner's own marketing, but for servicing clients' marketing and advertising needs. Employees who primarily provide services to clients would not appear to make up the Petitioner's own "sales and marketing team."

The record is incomplete and inconsistent with regard to the petitioning organization's "sales and marketing team," which is particularly significant because the majority of the Beneficiary's claimed duties relate to that team. Given the information discussed above, we conclude that the Petitioner has not met its burden of proof to establish that it seeks to employ the Beneficiary in an executive capacity.

III. CONCLUSION

We will dismiss the appeal for the reasons stated above.

ORDER: The appeal is dismissed.

[4] The Petitioner asserts on appeal that its foreign affiliate has "over 150 employees," but the organizational chart in the record, with the heading "Complete Organizational Structure," shows 108 people. Half of those 108 individuals are identified only by their first names.